

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )

MDL NO. 1456  
Civil Action No. 01-12257-PBS

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THIS DOCUMENT RELATES TO ALL )  
CLASS ACTIONS )

Hon. Patti B. Saris  
Chief Mag. Judge Marianne B. Bowler

**TRACK 1 DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL**

The Track 1 Defendants,<sup>1</sup> by their attorneys, hereby move this Court for leave to file under seal the Track 1 Defendants' Memorandum in Response to Plaintiffs' Motion to Supplement the Record (the "Memorandum in Response") and the deposition testimony attached to the Andrew D. Schau declaration.

Pursuant to the Protective Order entered by this Court on December 13, 2002 (the "MDL Protective Order"), the parties in the above captioned cases and non-party witnesses have designated many documents and other information produced in these cases as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The Memorandum in Response incorporates – either directly or indirectly – information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The Memorandum in Response includes references to contractual terms, reimbursement data, and financial information that defendants and non-party witnesses deem highly proprietary. Pursuant to paragraph 15 of the MDL

<sup>1</sup> The Track 1 Defendants are: AstraZeneca, the BMS Group, SmithKlineBeecham d/b/a GlaxoSmithKline, the Johnson & Johnson Group, and the Schering-Plough Group.

Protective Order, any document or pleading containing quotes from or otherwise referencing such information shall be filed under seal.

In addition, the parties in the above captioned cases have at times designated deposition testimony as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The deposition excerpts from the depositions of Gary M. Owens, Vice President of Medical Management for Independence Blue Cross, taken on July 22, 2005 and Susan Johnson, Aetna Medical Support Manager, taken on March 16, 2005, which are quoted throughout the Memorandum in Response and which are attached as exhibits to the Andrew D. Schau declaration dated August 3, 2005, were both designated "HIGHLY CONFIDENTIAL" by those third parties. As such, Pursuant to paragraph 14 of the MDL Protective Order, this deposition testimony shall be filed under seal.

WHEREFORE, the Track 1 Defendants respectfully request that this Court grant them leave to file the Memorandum in Response and deposition testimony attached as exhibits to the Andrew D. Schau declaration under seal. The Track 1 Defendants will prepare and file a redacted version of the Memorandum in Response in the public file.

Respectfully submitted,

**ON BEHALF OF THE TRACK 1 DEFENDANTS**

/s/ Andrew D. Schau

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Dated: August 3, 2005

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for defendants attempted to confer with counsel for plaintiff on this motion, but was unable to reach counsel for plaintiff.

/s/ Andrew D. Schau

Andrew D. Schau

**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2005 I caused a true and correct copy of Track 1 Defendants' Motion for Leave to File Under Seal to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/Andrew D. Schau

Andrew D. Schau